

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

SARAH CHANNEL AND MARY CHANNEL

Appellants

v.

CINTAS CORPORATION NO. 2, ET AL.,

Respondents

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DOCKET NUMBER WD79673

DATE: March 28, 2017

Appeal From:

Circuit Court of Vernon County, MO
The Honorable James R. Bickel, Judge

Appellate Judges:

Division Four
Mark D. Pfeiffer, Chief Judge Presiding, Thomas H. Newton, and Anthony Rex Gabbert, Judges

Attorneys:

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Counsel for Appellants

Attorneys:

George Reinbold, IV, Springfield, MO

Counsel for Respondents

MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

SARAH CHANNEL AND MARY CHANNEL, Appellants, v.
CINTAS CORPORATION NO. 2, ET AL., Respondents.

WD79673

Vernon County

Before Division Four Judges: Pfeiffer, C.J., Newton, and Gabbert, JJ.

Channel was employed as a route delivery driver for Cintas Corporation. Walker was Channel's co-employee supervisor. Essentially, the claim underlying this lawsuit is that Walker purposefully set upon a course of creating an adverse work environment by ignoring the company-instituted heat-safety training, which would result in Channel terminating his employment with Cintas. The lawsuit alleges that Walker's scheme included placing Channel in the only delivery truck not equipped with air conditioning on a day when temperatures exceeded 100 degrees. During this assignment, Channel succumbed to heat stroke and died.

Channel's daughter filed her second amended wrongful death petition alleging that Walker was personally liable to Appellants because he breached a personal duty of care owed to Channel and Cintas was vicariously liable for Walker's negligence. Walker and Cintas filed a motion for summary judgment, arguing that Channel's daughter's exclusive remedy was under the Missouri Workers' Compensation Act, and Walker argued that the undisputed facts were insufficient to show that he breached any duty other than that of the employer's nondelegable duty to keep its employees safe. The circuit court entered summary judgment in favor of Cintas and Walker, concluding that Channel's death was the result of an accidental injury. Channel's daughter appeals.

REVERSE AND REMAND.

Division Four holds:

In the second point, Channel asserts that the trial court erred in granting summary judgment for Cintas because, under the primary jurisdiction doctrine, the circuit court did not have authority to determine if there was an accidental injury within the definitions of the workers' compensation law while a workers' compensation claim is still pending. We agree. Because the jurisdictional determination of this point will govern the Court's ability to rule on the liability issue raised by point one, we will only address point two.

The Missouri Supreme Court has ruled that the Labor and Industrial Relations Commission has exclusive jurisdiction to determine whether an employee's injuries resulted from an accident. Under the primary jurisdiction doctrine, the Commission has original jurisdiction to determine the issues of fact and establish whether or not a claim is subject to its jurisdiction. This doctrine applies to the question of whether an employee's injuries are the product of an accident. Missouri courts have determined that defendants seeking a pretrial dismissal based on workers' compensation exclusivity must file a motion for summary judgment. The entry of summary judgment, however, is premature until the Commission has decided the question of accidental injury. Thus the circuit court should issue a stay of proceedings until the Commission's jurisdiction is determined. Here, the trial court's order deeming Channel's death

an accident is premature. The record does not reflect that the filed workers compensation claim was disposed of before the trial court's summary judgment hearing. Therefore, summary judgment was entered in violation of the primary jurisdiction doctrine and would prematurely inhibit the pursuit of justice. Channel's daughter's second point is granted.

Therefore, we reverse and remand for entry of a stay of proceedings.

Opinion by Thomas H. Newton, Judge

March 28, 2017

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